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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: March 29, 2019) Case No.: PSH-19-0016
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Issued: May 30, 2019

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

On June 26, 2018, the Individual, a DOE Security Clearance holder, submitted an Incident Report to the Local Security Office (LSO) indicating that he had been arrested and charged with Driving Under the Influence (DUI) on June 24, 2018. Ex. 6 at 1. The LSO conducted a Personnel Security Interview (PSI) of the Individual on August 21, 2018, during which the Individual admitted consuming six alcoholic beverages prior to this arrest. Ex. 9 at 25-31. Because this derogatory information raised concerns about the Individual’s alcohol use and psychological state, the LSO asked the Individual to undergo a forensic psychological evaluation by a DOE Psychologist (the Psychologist). The Psychologist conducted a clinical interview (the Clinical Interview) of the Individual on October 24, 2018, and on November 2, 2018, he issued a report concluding that the Individual “habitually or binge consume[s] alcohol to the point of impaired judgment.” Ex. 7 at 3, 8-9. On the basis of the Individual’s DUI arrest, the Individual’s description of his alcohol use history, and the Psychologist’s opinion, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. See 10 C.F.R. § 710.21.

¹ Under the regulations, “Access authorization” means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

The Individual requested a hearing and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on March 29, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his supervisor, his spouse, and the Psychologist. See Transcript of Hearing, Case No. PSH-19-0016 (hereinafter cited as "Tr."). The LSO submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as "Ex."). The Individual submitted ten exhibits, marked as Exhibits A through J.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). Specifically, the LSO alleges that the Individual has been found to "binge consume alcohol to the point of impaired judgment." The LSO further alleges that the Individual has recently been arrested for DUI. This information adequately justifies the LSO's invocation of Guideline G and raises significant security concerns. The Adjudicative Guidelines state: "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Guideline G at ¶ 21. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are (1) "alcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder" (Guideline G at § 22(a)); and (2) "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder" (Guideline G at § 22(c)). These allegations adequately justify the LSO's invocation of Guideline G.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence

at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue. The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

On June 24, 2018, police arrested and charged the Individual with DUI. Ex. 6 at 1. At the time of this arrest, the Individual's Blood Alcohol Level (BAL) was measured as .37. Ex. 2 at 9.

On August 21, 2018, the LSO conducted a PSI of the Individual. During this PSI, the Individual reported that he had been undergoing counseling for Post-Traumatic Stress Disorder (PTSD) and had begun counseling at the Veteran's Administration (VA) in response to his DUI arrest. Ex. 9 at 22, 99. The Individual stated that, on the afternoon of June 24, 2018, he had experienced a flashback to an incident in Iraq, when he had been wounded in combat. Ex. 9 at 23. He then began experiencing a panic attack. Ex. 9 at 23. The Individual stated that he then visited a nearby bar and restaurant where he consumed three mixed drinks over a 45 minutes to one hour time period. Ex. 9 at 23, 27. The Individual stated that he then drove to a second bar, where he consumed three more mixed drinks over a 90 minute time period. Ex. 9 at 27, 29. He was arrested when he attempted to drive home from the second bar. Ex. 9 at 29. The Individual stated that he did not feel intoxicated at the time of the arrest. Ex. 9 at 31, 68. The Individual claimed THAT he drinks three or four times a week, and consumes one or two beers or glasses of wine at a sitting, and that the last time he drank to intoxication was in 2015. Ex. 9 at 59- 60. The Individual claimed that the only occasion in which he consumed excessive amounts of alcohol before operating a motor vehicle occurred on June 24, 2018. Ex. 9 at 62. The Individual stated that he does not plan to become intoxicated in the future, and plans to avoid driving after consuming alcohol. Ex. 9 at 68.

Because of the security concerns raised by these incidents, the Individual was evaluated by the Psychologist on October 24, 2018, at the LSO's request. Ex. 7 at 3. The Psychologist also requested that the Individual take two laboratory tests, the Ethyl Glucuronide (EtG) and Phosphatidylethanol (PEth) tests, in order to ascertain whether he had recently used alcohol. Ex. 7 at 3. Thereafter, the Psychologist forwarded the results of the EtG and PEth tests to a consulting Psychiatrist (the Psychiatrist) for interpretation. Ex. 7 at 6. On November 2, 2018, the Psychologist issued a report in which he concluded that although the Individual "does not meet full criteria for an alcohol use disorder he does habitually or binge consume alcohol to the point of impaired judgment." Ex. 7 at 8-9.

During the Clinical Interview, the Individual reported that his consumption pattern since 2010 had remained constant: "One to two 12-ounce beers or glasses of white wine with dinner approximately three to four nights per week over one to two hours and two to three beers over a four- to five-hour period while working around the house on weekends." Ex. 7 at 5-6. The Psychologist noted that, during the PSI, the Individual had reported consuming six alcoholic beverages prior to his DUI arrest, although the Individual admitted during the Clinical Interview that he had "no idea" how much alcohol he had consumed prior to his DUI arrest. Ex. 7 at 3-4. The Psychologist reported that, during the Clinical Interview, the Individual stated that, "since his arrest in June 2018 he has resumed consuming alcohol at his "usual" moderate rate . . . [and] that his future intentions are to

continue to drink in moderation, though [he] was emphatic that he will never drink in any quantity again before driving, nor will he use alcohol in an effort to self-medicate.” Ex. 7 at 6.

Relying upon the Psychiatrist’s interpretation of the results of the PEth test administered to the Individual on October 24, 2018,² the Psychologist opined that:

The laboratory reports conflict with [the Individual’s] assertion that he consumes a low-to-moderate amount of alcohol, showing that he drinks a substantially higher amount than he reported, perhaps twice as much. Overall, his pattern of consumption constitutes habitual drinking. The incident of June 24, 2018 was an event of binge drinking leading to intense intoxication. This binge episode may represent a departure from his usual pattern of consumption of alcohol, and is certainly connected to his psychological condition . . . However, he is a regular and heavy consumer of alcohol; he used it for purposes of "self-medication". . . in at least one instance; and he significantly under-reported his level of consumption in both the PSI and in our interview. All of these factors raise questions about his judgment and reliability.

Ex. 7 at 6-7.

Even though the Psychologist found that the Individual did not have an emotional, mental, or personality condition or conditions that can impair his judgment, stability, reliability or trustworthiness, or meet the criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5)* for Alcohol Use Disorder, he recommended that the Individual undergo an Intensive Outpatient Program (IOP) with an aftercare component, and participate in a 12-step program such as Alcoholics Anonymous (AA). Ex. 7 at 9. The Psychologist further opined that the Individual must demonstrate that he can abstain from using alcohol for a minimum of nine months. Ex. 7 at 9.

On March 1, 2019, the Individual was accepted into a local court-supervised program for veterans in order to address his DUI arrest. Ex. B at 1. Under this program, the Individual has been required to attend weekly counseling sessions at a Veterans Administration (VA) facility, as well as DUI classes. Ex. B at 1.

² In a letter to the Psychologist dated November 1, 2018, the Psychiatrist opined, in pertinent part:

The subject's Phosphatidylethanol (PEth) test was positive at a level of 260 ng/ml (the detection limit is 20 ng/ml). This PEth level is congruent with regular, heavy consumption of alcohol. In one study these levels were consistent with four or more drinks a day several days a week. Given his negative EtG along with this PEth level it is probable that the PEth was even higher in the week prior to the testing, congruent with heavy consumption.

Ex. 7 at 18. The National Institute on Alcohol Abuse and Alcoholism’s website states that it defines binge drinking as a pattern of drinking that brings blood alcohol concentration (BAC) levels to 0.08 g/dL. This typically occurs after 4 drinks for women and 5 drinks for men within a period of about 2 hours. The Substance Abuse and Mental Health Services Administration (SAMHSA), which conducts the annual National Survey on Drug Use and Health (NSDUH), defines a binge drinker as someone who has consumed 5 or more alcoholic drinks (for males) or 4 or more alcoholic drinks (for females) on the same occasion on at least 1 day in the past month. SAMHSA defines heavy alcohol use as binge drinking on 5 or more days in the past month. <https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/moderate-binge-drinking>.

The Individual has submitted medical records from the VA indicating that he had agreed to enter the local court-supervised program for veterans and that the program required him to abstain from alcohol use for 12 months. Ex. D at 5. In addition, the Individual has also submitted a letter of support from his Mental Health Treatment Coordinator at the VA, who stated that he is treating the Individual for PTSD. Ex. E at 1. This letter of support does not indicate that the Mental Health Treatment Coordinator is treating the Individual for any alcohol issues, or provide a prognosis for the expected future course of the Individual's PTSD. The Individual also submitted a progress report, dated March 1, 2019, from the local court-supervised program for veterans. This report indicates that the Individual was attending weekly substance abuse classes and was "very proactive and very actively engaged in treatment." Ex. F at 1. The Individual has also submitted documentation of his regular attendance at the local court-supervised program for veterans. Ex. G; Ex. H. The Individual also submitted documentation of his attendance at 39 DUI classes. Ex. I.

V. ANALYSIS

At the hearing, the Individual testified "I have engaged in heavy consumption of alcohol or binge drinking in the past as a way to self-medicate for my challenges related to posttraumatic stress disorder." Tr. at 46. The Individual further testified: "I'm not surprised by the findings of the PEth test that I submitted on October 24th after meeting with [the Psychologist]." Tr. at 49. The Individual admitted that prior to the DUI, he was becoming intoxicated on a daily basis, and that he would sometimes consume four or five units of alcohol when drinking. Tr. at 55, 93. The Individual expressed remorse for the circumstances that led to his DUI, which he attributed to his attempt to self-medicate his PTSD. Tr. at 48-49. The Individual saw his DUI as a wake-up call for him to address his PTSD, and immediately sought counseling at the VA. Tr. at 49. As a result, the Individual testified "I have re-evaluated my alcohol consumption in more realistic terms. Drinking to self-medicate was something I was doing to alleviate my symptoms when I had a flare-up. This was evidenced by the number of empty bottles and cans I found in my recycling at the end of October, 2018." Tr. at 50. The Individual further testified that he has been prescribed medication for his PTSD symptoms that, along with the counseling he has been undergoing, has been effective, and that he no longer feels the need to self-medicate with alcohol. Tr. at 50. The Individual further testified that he has enrolled in the local court-supervised program for veterans that requires "12 months of abstinence from alcohol, weekly urinalysis testing, weekly counseling for mental health and to appear before a judge as she deems necessary." Tr. at 51-52. The Individual further testified that he has been compliant with this program and had not ingested alcohol for 68 days, with his last consumption of alcohol occurring on February 28, 2019 (the night before he entered into the local court-supervised program for veterans). Tr. at 51-52, 55. The Individual testified that while his counseling is focused on PTSD and has not addressed alcohol issues, he believes that PTSD is the root-cause of his problems with alcohol. Tr. at 75. Noting that his counselor never recommended alcohol treatment, the Individual testified that he does not believe that he has a problem with alcohol. Tr. at 75-77, 89. However, the Individual further testified that his alcohol education classes taught him that his consumption of alcohol "wasn't always done in a healthy or constructive manner and that that needed to change." Tr. at 89. When asked about his intentions concerning alcohol use after his one year of mandated abstinence is over the Individual stated: "I don't think that I'm going to be drinking hardly at all, actually." Tr. at 77.

The Individual's Spouse testified at the hearing. She testified that the Individual would, in the past, consume a glass of wine or a beer at home. She described his alcohol use as "recreational and in moderation" and stated that his drinking "never set off alarm bells." Tr. at 24. However, she also testified that her husband had, in the past, retreated to the garage where he used alcohol, and that she was unaware of how much alcohol he was consuming in the garage. Tr. at 37-38. She reported that after his DUI, the Individual began counseling at the VA and stated that he was giving up alcohol. Tr. at 28. She has not observed him drinking excessively since the DUI. Tr. at 33. The Individual indicated to her that he intends to abstain from alcohol use in accordance with the requirements of the local court-supervised program for veterans, Tr. at 35, and he is no longer using alcohol, because of that program. Tr. at 39. She testified that her husband is the most trustworthy and honorable person that she has ever met. Tr. at 33.

The Psychologist observed the testimony of the other witnesses before he testified. The Psychologist testified that the Individual's accounts of his alcohol consumption history provided during his PSI and his Clinical Interview were inconsistent with the results of the PEth test, which he claimed indicated that the Individual had been consuming alcohol regularly at a high level. Tr. at 102. The Psychologist testified that he agrees that the Individual's alcohol problem is secondary to his PTSD. Tr. at 106. The Psychologist noted that the Individual's DUI classes are providing him with education about alcohol, but do not constitute treatment. Tr. at 107. He further noted that the Individual's counseling was not addressing his alcohol issues. Tr. at 107. The Psychologist testified that the Individual had not abstained from alcohol use for a sufficient period of time, and that he needed to attend an IOP or two to three meetings of AA or an equivalent type group per week for four months. Tr. at 108, 124. The Psychologist noted that "We like to see -- if there's a habitual -- a problem of habitual alcohol usage, regardless of whether it qualifies for a disorder, we'd like to see six to 12 months of abstinence as an indicator of somebody being firm in their remediation of that habit." Tr. at 126.

The Psychologist testified that the Individual's use of alcohol to self-medicate his PTSD "represents an unhealthy and potentially problematic use of alcohol that can lead to, among other things, problems with judgment and reliability." Tr. at 118. The Psychologist testified that the Individual's inability to accurately report his alcohol consumption history indicates that he is either being deceptive or that he is unaware of his level of consumption. Tr. at 117. The Psychologist testified that the Individual might have been in denial about the role alcohol had played in his problems at the time of his Clinical Interview. Tr. at 117-118. However, the Psychologist testified that the Individual has gained insight into the role alcohol had played in his problems since the Clinical Interview. Tr. at 118. The Psychologist characterized the probability that the Individual would return to binge drinking as "low," given his treatment for PTSD. Tr. at 123-124.

While I assign little evidentiary weight to the results of the PEth test,³ the Individual has admitted that he had been engaging in a pattern of heavy drinking extending into the later months of 2018. Accordingly, I find that the Individual has engaged in habitual or binge consumption of alcohol to the point of impaired judgment. Moreover, the Individual has repeatedly exhibited defects in judgment, reliability, and trustworthiness in connection to his use of alcohol, specifically during

³ The LSO has not submitted sufficient information into the record to allow me to conclude that a sufficient scientific consensus exists as to how the PEth test results should be interpreted, and whether it is a reliable tool for determining an individual's alcohol consumption in the weeks prior to the administration of the test.

the actions which led to his DUI, and when he deliberately provided false information concerning his alcohol consumption during both his PSI and the Clinical Interview.

The Individual has presented evidence that he has taken actions to address the LSO's concerns about his alcohol use; including enrolling in the local court-supervised program for veterans, attending 39 DUI classes, obtaining medical and pharmacological treatment for his underlying PTSD, obtaining weekly counseling for his PTSD, abstaining from alcohol use for 68 days, and committing to abstaining from alcohol use. I find that these actions provide some mitigation of the security concerns raised by the Individual's habitual or binge consumption of alcohol to the point of impaired judgment and DUI under Guideline G. However, the mitigation provided by these actions is not yet sufficient to resolve the security concerns at issue in the present case. While the Psychologist characterized the likelihood that the Individual would return to binge drinking as "low," he also recommended an additional four months abstinence, as well as, either enrollment in an IOP or attendance at AA meetings, in order to resolve these security concerns. Since the Individual has not been diagnosed with an alcohol disorder, his enrollment in the local court-supervised program for veterans, his attendance at 39 DUI classes, his medical and pharmacological treatment for his underlying PTSD, and his weekly counseling for his PTSD serve essentially the same function for him as enrollment in an IOP or attendance at AA meetings. However, at the time of his hearing, the Individual had only maintained abstinence from alcohol use for 68 days, an inadequate period of time for him to prove that he has resolved the concerns about his judgment, reliability, and trustworthiness arising from his DUI and habitual or binge consumption of alcohol.

Guideline G, Section 23, sets forth four conditions that "could mitigate security concerns" raised under Guideline G. I find that none of these conditions are sufficiently present in the instant case to mitigate the security concerns raised by the LSO under Guideline G regarding the Individual's habitual or binge consumption of alcohol and his DUI.

Section 23(a) provides that security concerns raised under Guideline G can be mitigated if: "so much time has passed or the behavior is so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment." While the Psychologist's opinion is that there is now a low probability that the Individual will return to his pattern of excessive alcohol consumption, I am not sufficiently convinced that the Individual will not return to his problematic alcohol consumption to support a conclusion that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. While the Individual's testimony shows that he now understands that he was using alcohol to self-medicate his PTSD and has taken the appropriate actions, as discussed above, to address his PTSD and misuse of alcohol, not enough time has passed for the Individual to sufficiently establish that he is able to avoid future misuse of alcohol and the likely resulting impairments to his judgment, reliability, and trustworthiness.

Section 23(b) provides that security concerns raised under Guideline G can be mitigated if: "the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations." The Individual has acknowledged his pattern of maladaptive alcohol use, and taken actions to overcome this problem,

as discussed above. However, the Individual has not, as of yet, demonstrated a clear and established pattern of modified consumption or abstinence, since he had only abstained from alcohol use for 68 days at the time of the hearing.

Section 23(c) provides that security concerns raised under Guideline G can be mitigated if: “the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program.” The Individual is currently participating in counseling and is making satisfactory progress. However, he has a previous history of treatment and relapse from PTSD, the disorder underlying his problematic alcohol use. Ex. 7 at 7.

Section 23(d) provides that security concerns raised under Guideline G can be mitigated if: “the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.” As discussed above, the Individual has not completed a treatment program, and has not sufficiently established pattern of modified consumption or abstinence.

I have found that no mitigating conditions are present in the instant case. Accordingly, I find that the security concerns arising under Guideline G from the Individual’s habitual or binge consumption of alcohol to the point of impaired judgment and his DUI have not been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not sufficiently mitigated the security concerns raised under Guideline G. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should not be restored. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals